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**OFFICE OF PETITIONS**

In re Application of	:	
Gentz et al.	:	DECISION ON REQUEST FOR
Application No. 09/518,931	:	RECONSIDERATION OF
Filed: March 3, 2000	:	PATENT TERM ADJUSTMENT
Atty Docket No. PF454P1	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF DECISION ON APPLICATION FOR PATENT TERM ADJUSTMENT" filed March 7, 2007. Patentees request reconsideration of the Patent Term Adjustment indicated in the Decision on Application for Patent Term Adjustment mailed on January 9, 2007. Patentees request that the determination of six hundred twenty-two (622) days be corrected to one thousand forty-three (1043) days.

The request for reconsideration of decision on application for patent term adjustment is **DISMISSED**.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

**BACKGROUND**

On July 12, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment<sup>1</sup> (PTA) to date is 1226 days.

On October 11, 2006, patentees timely submitted an application for patent term adjustment (with required fee). Therein,

<sup>1</sup> This application became eligible for patent term adjustment for examination delay by virtue of the filing of a continuing prosecution application on October 25, 2000.

patentees indicated that both the period of adjustment of 1146 for Office delay in responding to patentees' reply and the period of adjustment of 206 days for Office delay due to an interference delay should not be entered. Patentees asserted that the period of adjustment of 206 days should be corrected to 0 days because the period of 206 days extending from July 17, 2003 until February 8, 2004, overlapped entirely with the period calculated for the 1146-day Office delay. Patentees did not otherwise dispute the period of suspension of 206 days.

By decision mailed January 9, 2007, the Office advised patentees that the entry of a period of delay of 1146 days pursuant to 37 CFR 1.702(a)(2) was incorrect. Specifically, there was no Office delay within the meaning of 37 CFR 1.702(a)(2). The decision concluded that on January 17, 2002, the Office mailed the Letter Regarding Suspension in response to, and within four months of, patentees filing of the amendment after final on November 20, 2001. Thus, there was no examination delay.

Moreover, the decision entered a total of 725 days (including the previously accorded 206 days) for examination delay pursuant to 1.702(c) for those periods during which issuance of the patent was delayed due to interference proceedings under 35 U.S.C. 135(a). With respect to the suspensions in this case, it was concluded that the periods of adjustment are properly 306 days for the period from January 16, 2002 to November 18, 2002, 206 days for the period from July 17, 2003 to February 8, 2004, and 213 days for the period from June 9, 2004 to January 8, 2005 for a total of 725 days.

In view of the undisputed period of reduction of 126 days for applicant delay, the decision concluded that the patent term adjustment determination at the time of the mailing of the notice of allowance was 599 days (725 - 126).

After the mailing of the notice of allowance, an additional period of adjustment of 23 days was entered for the Office taking in excess of four months to issue the patent after the issue fee was paid and all outstanding requirements met.

Accordingly, on March 6, 2007, the patent issued with a revised patent term adjustment of 622 days.

On March 7, 2007, patentees timely filed this request for reconsideration of decision on application for patent term adjustment.

#### OPINION

Patentees' arguments have been considered, but not found persuasive. First, of all, there was no examination delay within the meaning of 35 USC 154(b)(1)(A)(ii) and 37 CFR 1.702(a)(2). The reply under 35 U.S.C. 132 was filed on November 20, 2001. The Letter Regarding Suspension mailed January 17, 2002, was mailed in response to and within four months of, the filing of the reply. Further, a review of the Letter Regarding Suspension makes clear that it is an Office action prepared by the examiner as a result of the examination conducted pursuant to 35 U.S.C. 131. For example, therein the amendment after final rejection was entered and patentees were advised as all claims were allowable. The Letter Regarding Suspension is a notification under 132 and properly stops the clock for determining examination delay pursuant to 37 CFR 1.702(a)(2).

The delay in this instance is for interference proceedings not for Office delay in taking action in response to the amendment filed November 20, 2001. A review of the record confirms that the period of 725 days entered pursuant to 37 CFR 1.703(c)(2) is also correct. As previously stated, this period is limited to the number of days in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension. It was proper to use the dates of November 18, 2002, February 8, 2004 and January 8, 2005 for the dates of termination of suspensions. As stated in each letter, ex parte prosecution was

SUSPENDED FOR A PERIOD OF 6 MONTHS from the mail date of the letter. Upon expiration of the period of suspension, applicant should make an inquiry as to the status of the application.

No inquiry having been made by patentees at the end of the 6 month period, nonetheless, the suspensions were terminated. The suspensions did not last until the mailing of the Office action on May 9, 2005.

In view thereof the patent properly issued with a revised patent term adjustment of six hundred twenty-two (622) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



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